

Testimony of Deb Peters, Lead Advocate/Tax Expert, Americans for Digital Opportunity

Connecticut Finance, Revenue and Bonding Committee | February 27, 2023

Members of the Finance, Revenue and Bonding Committee:

My name is Deb Peters. I am a former State Senator from South Dakota and former President of the National Conference of State Legislatures. I am a Certified Public Accountant and Finance professional with an extensive background in state tax law and related regulation. If you recognize my name related to tax policy, it is due to the South Dakota vs. Wayfair decision which overturned two U.S. Supreme Court cases.

I am here today representing the Americans for Digital Opportunity and the Association of National Advertisers in opposition to HB 5673. Specifically, Item #2 – the establishment of a 10% tax on the annual gross revenue of any business with annual gross revenue exceeding 10 BILLION from digital advertising services.

Before I get into the technical reasons why this bill is deeply flawed, I want to address the real-world consequences of taxing advertising. Very simply, this is a tax on all businesses that utilize digital advertising. Not just big businesses this legislation claims to target but small and medium sized businesses as well.

The sponsors of this legislation might believe they are taking a swing at large faceless corporations which don't exist in Connecticut but this language is a direct attack on the small, local, mom and pop shops trying to stay afloat in your legislative districts.

After three years of fighting COVID and with inflation still raging, this is a really bad time for a really bad idea.

Whether we like it or not, the American economy has been transformed by digital advertising – allowing countless small businesses to earn a profit and some to become worldwide brands. There is hardly a business in existence today that does not use some kind of digital advertising to reach their customers and their future customers.

Connecticut has had a general philosophy of not taxing business inputs. Generally, most states do not tax business inputs because you already tax the business income from the outputs. Taxing the inputs and the outputs, you are double taxing your businesses. This isn't just unfair, it's wrong.

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Attempting to tax the GROSS revenue of businesses who are not located in Connecticut will simply increase costs for your local businesses. Whether it's the intended consequence or not, this bill will have a negative impact on nearly every business in each of your legislative districts.

Furthermore, I have spent time reading the written testimony to this bill and I wholeheartedly agree with the opposition descriptions of “sufficiently vague”, “discriminatory” and “multiple tax.”

These are key words in any court case related to taxation. We don't have time today to delve into the complexities of business taxation; however, I would like to highlight a couple bullet points.

- ITFA (Internet Tax Freedom Act) was passed by Congress in 1998 to provide a moratorium on both (i) new state taxes on internet services and (ii) “multiple or discriminatory taxes on electronic commerce.” ITFA prohibits a state from enacting a tax that results in the same internet transaction being subject to taxation in more than one jurisdiction without an offsetting credit (HB5673 does not provide for any clarification on how various jurisdictions shall be treated and this leads to other issues related what to do with the Global Revenues). This violates the Commerce Clause.
- PITFA (Permanent Internet Tax Freedom Act) was passed by Congress in 2015 to permanently prohibit taxes on internet transactions that are not imposed on similar transactions not on the internet (HB5673 does not tax advertising but targets digital advertising). A clear violation of PITFA.

This proposed legislation also has major issues related to administration and implementation. How will this type of tax be implemented and enforced?

A similar law in Maryland passed in 2021 and was immediately challenged in court. In 2022, a Maryland Circuit Court invalidated the Maryland tax for violating PITFA. This decision is presently under review by Maryland's Supreme Court.

With the state of our economy, with inflation at its current levels, and interest rates constantly on the rise, anything you do to raise the cost of doing business will cause a ripple effect, and not a good one.

If you increase prices of products, your constituents and local businesses will pull back spending even more, ultimately causing job loss as businesses cannot afford the status quo of operating their business in your districts.

This cannot be the desired outcome of this legislation.

Please oppose HB 5673.